

**GOVERNOR'S ADVISORY COUNCIL FOR EXCEPTIONAL CITIZENS (GACEC)
GENERAL MEMBERSHIP MEETING**

7:00P.M., April 18, 2017

**George V. Massey Station, Second Floor Conference Room
516 West Loockerman Street, Dover, DE**

MINUTES

MEMBERS PRESENT: Chairperson Dafne Carnright, Carma Carpenter, Al Cavalier, Nancy Cordrey, Cathy Cowin, Bill Doolittle, Karen Eller, Ann Fisher, Lisa Gonzon, Terri Hancharick, Brian Hartman, Emmanuel Jenkins, Danna Levy, Karen McGloughlin, Chris McIntyre, Mary Ann Mieczkowski, Beth Mineo, Bill O'Neill, Robert Overmiller, Jennifer Pulcinella and Brenné Shepperson.

OTHERS PRESENT: Guests: Tracy Neugebauer, Maureen Whalen and Cindy Brown (DOE), The Honorable Susan Bunting, Secretary of Education, Andrew Braune and Gabriel Humphries (Green Line Business Group), Sandi Miller (DVR), Kimberly Krzanowski (Office of Early Learning) and self-advocates Harley Doolittle and Katie Cordrey.

Staff present: Wendy Strauss/Executive Director and Kathie Cherry/Office Manager

MEMBERS ABSENT Bernie Greenfield, Carrie Melchisky, Shawn Rohe, Howard Shiber, Thomas Keeton, Sonya Lawrence.

Chairperson Dafne Carnright called the meeting to order at 7:15 p.m. Dafne asked that members refrain from side bar conversation as it makes hearing and recording difficult. Dafne requested that anyone who speaks does so while using a microphone.

GENERAL MEMBERSHIP MEETING

A **Motion** was made to approve the agenda. The **motion was approved.**

PUBLIC COMMENTS

Dafne then introduced Andrew Braune and Gabriel Humphries of Green Line Business Group out of Newark, DE to speak during the Public Comment period. They presented on their company technology, the Danio Diary. This is an app that is free and connects individuals with disabilities with their doctors and care networks as well as their family members. It allows an individual to share sensitive information about their health care. It is entirely HIPAA (Health Insurance Portability and Accountability Act) compliant. They presented a mockup of the interface one might see while using a smartphone. They previewed status updates that a user might send and share with their care network. A question was asked about storage of information and the length of time the stored information would be available. The information is

stored from the accounts inception and is always available to view. Dafne thanked Andrew and Gabriel for their information.

Dafne then asked for a **motion to approve** the March meeting minutes. The **motion was approved**. A **motion to approve** the March financial report was made. The **motion was approved**.

SPECIAL PRESENTATION

The Honorable Susan Bunting, Secretary of Education addressed the Council. Dr. Bunting thanked Council for the invitation to speak. She shared her background including her last position as Superintendent of the Indian River School District. She shared that the Department has defined a vision and a mission and she shared those with Council via PowerPoint. She shared that the Department of Education is envisioned by the Governor as a service and support agency. The Department hopes to offer that support to all students, staff and stakeholders. The priorities for the Department as listed on the power point were as follows:

- Engaged and informed families, schools, districts and communities.
- Rigorous standards, instruction and assessment.
- High quality early learning opportunities.
- Equitable access to excellent educators.
- Safe and healthy environments conducive to learning.

Secretary Bunting shared that the Department was going to begin refocusing from a regulatory agency to more of a support agency. The final ESSA (Every Student Succeeds Act) plan was submitted to the US. Department of Education on April 3, 2017. A copy of the PowerPoint presented by the Secretary is attached for your reference.

DOE REPORT

Mary Ann shared the DOE report for April 2017. It contained the following information:

Annual Performance Report

The Annual Performance Report was submitted on February 1, 2017. We will received OSEP (Office of Special Education Programs) comments tomorrow, April 19th and will have until Monday, May 1st to provide clarification to any of comments.

LEA Determinations

After the Annual Performance Report is submitted on February 1st, we have 120 day to provide LEAs (Local Education Agencies) with their Determinations. The LEA Determinations are similar to a district/charter report card. It provides them with their data tables for each indicator and tells them whether or not they met the targets. The districts/charters receive a point if they

met a target. All points are added up and a score is presented. The total score will determine if they meet requirements, need assistance or need intervention.

State Determination

OSEP provides the state with their determination sometime in June.

New State Personnel Development Grant

A new SPDG (State Professional Development Grant) was submitted last week to OSEP. Two goals were identified by stakeholders:

- Goal 1: To increase the capacity of the DDOE and Delaware LEAs and charters to implement an integrated Multi-Tiered System of Support (MTSS), aligned to existing state and LEA initiatives to increase student outcomes.
- Goal 2: To increase the capacity of schools to support the literacy proficiency of students with disabilities in K-3rd grade within an integrated MTSS, as measured by a decrease in the percentage of 3rd grade students with disabilities scoring below proficiency on the Delaware statewide assessment.

DIRECTORS/CHAIR REPORT

Dafne expressed her thanks to members for refraining from side bar conversations and using the microphones when speaking so that members with trouble hearing are able to participate. Wendy asked Mary Ann to report on a significant disproportionality meeting that was held last week. Mary Ann shared that there have been five meetings of stakeholder, in addition to the presentation at the GACEC retreat. The process is very complicated. There are 98 areas where a district could be sited for disproportionality so they are still collecting input from stakeholders. She commented that Bill Doolittle shared concerns that Council did not provide formal input and suggested an ad hoc committee to provide formal comments from Council. Wendy discussed the roll out of the special education strategic plan on April 27, 2017 at 1:00 pm in the DOE cabinet room. Wendy asked that anyone who could attend should do so. Wendy shared information on the draft legislation for School Resource Officers. She is hopeful that it will be heard in committee in the coming weeks. Wendy commented that we are still hard at work on getting legislation for funding the CLSC (Career and Life Studies Certificate) program. Discussion ensued about the due process layperson panelist. Wendy suggested reaching out to the DDC (Developmental Disabilities Council) and others to collaborate on getting the word out. Discussion ensued about the layperson due process panel application process.

COMMITTEE REPORTS

ADULT TRANSITION SERVICES

Cathy Cowin reported that Maureen Whalen spoke to the group to provide updates on the status of prison education. Staff have just recently returned since the incident in February. There are now two teachers per class in some prisons. There is also now a liaison between DOC (Department of Correction) and DOE to work with students who leave the prison system and desire to return to school. A new MOU (Memorandum of Understanding) between special education and the Department of Corrections has been formalized. Cathy will follow up with Maureen to decide which prison will be used for monitoring this summer. The group also discussed concerns around the lack of mental health professionals for individuals with cognitive disabilities as well as the poor transition from child mental health services to adult mental health services. The committee is recommending the formation of an ad hoc committee to address these concerns. A **motion was made and approved** to form the ad hoc committee.

CHILDREN AND YOUTH

The committee met with Tracy Neugebauer from DOE and discussed several topics including: indicator 4 results, the special education development grant, the Delaware PBS (positive behavioral supports) project and special development and coaching support available to schools. The group discussed the multi-tiered system of behavioral support. Finally, the group discussed significant disproportionality. The committee recommends an ad hoc committee to give final recommendations by the end of May. Karen Eller, Bill O'Neill and Bill Doolittle expressed interest in attending ad hoc committee meetings.

INFANT AND EARLY CHILDHOOD

The committee met with Cindy Brown from the Department of Education and Kim Krzanowski, the new Director of the Office of Early Learning at the Department. They learned more about Kim's background. The committee discussed the Delaware Stars program and their belief that inclusion should be added to the star rating system.

POLICY AND LAW

Committee vice-chair Brian Hartman shared that the committee discussed the April Policy and Law legal memo and supplements and decided to accept comments as written on the following: 4,5,6,9,10,11,12 and 13. **The committee also approved taking action on item 7 with the addition of one comment:** In §2.4.7, the DIAA (Delaware Interscholastic Athletics Association) strikes the word "athletics". To obviate any implication that the DIAA is regulating non-athletic activities in the standards, the DIAA should preferably retain the word "athletics".

Committee approved two additional edits on item 8: In paragraph 2, add a comment that since minors can be neighborhood home residents the definition of "authorized representative" should preferably be expanded to cover a parent or guardian of a minor. In paragraph 8 add a comment that ramps may also be appropriate for travel of individuals who have mobility issues

but who do not use a wheelchair.

The commentary from the legal memo is as follows:

4. DFS Proposed Family & Lg. Family Child Care Homes Regulation [20 DE Regulation 775 (4/1/17)]

The Division of Family Services (DFS) proposed to revise a single section (addressing fire extinguishers) in its standards covering family and large family child care homes. The rationale is as follows:

Currently Section 22 exceeds the National Fire Protection Association's (NFPA) Life Safety Code and does not provide clarification on the placement of a fire extinguisher. The proposed Section aligns with the Life Safety Code and provides clarification on the placement of a fire extinguisher.

At 776.

The committee discussed the following observations.

First, the revision explicitly disallows placement of the required fire extinguisher in a cabinet or closet. This is a well-intentioned change since a "hidden" extinguisher is of little value in an emergency. However, the literal ban on mounting an extinguisher "in a cabinet" would disallow use of even a recessed fire-rated cabinet on a wall. The advantage of such a recessed or low-protrusion cabinet is that it is compatible with ADA (Americans with Disabilities Act) standards disallowing objects from protruding more than 4" from walls between 27-80" above the floor. DFS should consider modifying its standards so mounting in such a cabinet would be permitted, if not encouraged.

Second, the other material change is to add more discrete standards for the height of mounting the extinguisher based on its weight. The current standard (being deleted) requires all fire extinguishers to be mounted no more than 40 inches above the floor. Under the proposed standard, heavier units could not be hung more than 42 inches from the floor while lighter units could be hung up to 60 inches from the floor. We infer the rationale is that the combination of a heavy unit and high mounting could make access difficult for individuals who are short in stature or lacking strength. While such differentiation has some facial validity, DFS may wish to adopt a uniform standard, i.e., either retaining the current 40" standard or adopting a 42" standard for all fire extinguishers. The rationale is as follows:

A. A uniform standard is easier to follow and enforce.

B. The 42" standard is very close to the current 40" standard so licensees should be comfortable with the minor change.

C. Expecting individuals to heft a 39 lb. fire extinguisher hung 60 inches from the ground

in an emergency presents a safety concern. We suspect that many licensees would be hard-pressed to safely remove a 39 lb. fire extinguisher from a 5 foot wall mount. An unsuccessful attempt could lead to the extinguisher falling on the worker or a nearby child.

D. Individuals with disabilities (e.g. wheelchair users) may not be able to reach extinguishers mounted at high levels. The standard thus has an adverse impact on safety (if the licensee uses a wheelchair) and employability (if applicant who uses a wheelchair applies for a job in a child care home). Adopting a 42" height standard would ostensibly be compatible with ADA guidelines while the proposed 60" standard would not be compatible with ADA guidelines.

Third, the proposed standard is ambiguous on the mounting height. The DFS proposed standard could be interpreted as "hook" or "fastener" height.

Fourth, there is a grammatical error in the first line, i.e., "visibly" should be "visible".

The Council may wish to consider sharing these observations with the Division. The Council could consider sharing a courtesy copy with the State Fire Marshall and the Architectural Accessibility Board and recommending that DFS consult both entities prior to adopting a final regulation.

5. DPH Proposed DMOST Regulation [20 DE Regulation 770 (4/1/17)]

The Division of Public Health proposes to adopt a brief amendment to its regulations covering Delaware Medical Orders for Scope of Treatment (DMOST). Section 2.1.1 would be amended to clarify that the identification section of the DMOST form must include the address of record, phone number and gender of the patient. The form already included these fields but the regulation did not require their inclusion. The proposed amendment is benign and essentially a "housekeeping" initiative.

The Council may wish to consider endorsement.

6. DOE Proposed Instructional Program Requirements Regulation [20 DE Regulation 752 (4/1/17)]

The Department of Education proposes to adopt some discrete amendments to its instructional program standards.

The committee discussed the following observations.

In general, the current regulation lists several curricular categories (e.g. math, science, social studies) and requires public schools to provide instructional programs in each category. The

proposed amendment would insert a requirement in each category that it align with DOE standards and grade level performance expectations. We infer that the additional language reflects existing public school duties. Even charter school programs must be aligned to Delaware Content Standards, State program requirements and State graduation requirements. See Title 14 Del.C. §512(6).

Since the amendments are ostensibly reiterations of existing law and practice, the Council may wish to comment that they reviewed the initiative and did not identify any concerns.

7. DOE DIAA High School Interscholastic Athletics Regulation [20 DE Regulation 762 (4/1/17)]

The Delaware Interscholastic Athletic Association proposes to amend several regulations covering student participation in high school sports.

The committee discussed the following observations.

1. Section 2.4.4.1.4.2 disallows a student who participated in athletics and then transfers more than one time in his first two years of eligibility from playing any sport for 90 days. While barring the student from playing the same sport is intuitive, barring the student from playing a new sport is not intuitive. If one assumes that athletic activity is advantageous to the wellbeing of a student, it is ostensibly “overkill” to disallow a student from engaging in all athletic activities unrelated to sports played at the former school.

2. Section 2.4.7 disallows a student transferring to a “choice” school in grades 10-12 from participating in any sport offered at the former school even if the student did not participate in any sports at the former school. If one assumes that athletic activity is advantageous to the wellbeing of a student, the justification for this ban is difficult to understand. If a student played no sports at the prior school, it makes little sense to ban the student from playing in any sport offered by the prior school for a full school year. Students should not be penalized for opting to attend a “choice” school as allowed by law.

3. Section 2.7.3 authorizes the DIAA to grant hardship waivers based on the cap on years of participation. There are two concerns with this section. First, the U.S. DOE Office for Civil Rights touts many advantages to participation in athletics for disabilities. The IDEA encourages schools to include extracurricular activities (including athletics) in IEPs. The IEP team would therefore be a primary decision-maker in the context of participation in athletics. This concept is omitted from the regulation. By analogy, each district typically has a transportation director who determines student eligibility for a school bus and assignment to a bus stop. Since transportation is a special education related service, the IEP team (generally in consultation with the transportation director) determines how transportation will be provided for special education

students. In the event of disagreement, the IEP team decision prevails. The same concept applies to participation in IEP-listed athletics. The IEP team is the primary decision-maker concerning participation in IEP-listed athletics. Second, imposing a “burden of proof” on a student with an IEP to justify participation in athletics is a foreign concept in special education. The IEP team would deliberate and make a decision typically by consensus. There is no “burden of proof” in the IEP context.

4. The DIAA is involved in the State unified sports program. The regulation does not address how participation by students with disabilities is affected by participating in unified sports. For example, if a student with a disability plays in one unified sports scrimmage, does that count for one year of the participation cap under §2.7? The DIAA could consider inserting an exception for students with disabilities participation in unified sports from counting towards the participation cap in §2.7.

The Council may wish to share these observations with the DIAA and the DOE Special Education Director.

8. DLTCRP Proposed Neighborhood Home Regulation [20 DE Regulation 766 (4/1/17)]

The Division of Long Term Care Residents Protection (DLTCRP) proposes a full revision of the standards applicable to DDS neighborhood homes.

The committee discussed the following observations.

1. DHSS should consider joint promulgation of regulations by both the DLTCRP and the Division of Developmental Disabilities Services (DDDS). By statute, DDS is authorized to promulgate regulations covering neighborhood homes. In the past, the DLTCRP and DDS jointly promulgated the neighborhood home regulations. Sole promulgation by DLTCRP may render the regulations vulnerable to question in any enforcement action.
2. In §1.0, the definition of “authorized representative” merits revision. On the one hand, it appears to limit an “authorized representative” to someone acting on behalf of a resident lacking decision-making capacity in the first and last sentences. On the other hand, it includes someone appointed under a POA (Power of Attorney), AHCD (Advance Health Care Directive), or supportive decision-making agreement - all of which require the resident to have capacity. This is confusing. The section should be revised to encompass anyone authorized by law to act on the behalf of the resident.
3. In §1.0, definition of “person centered plan”, the grammar in the second sentence is incorrect. The list inconsistently includes nouns (people; strategies) and verbs (uses; offers).
4. In §3.2.1, insert “at least” prior to “annually”. Otherwise, a licensee could argue that DHSS

can only conduct one inspection annually, i.e., there is a regulatory “cap” of one inspection annually.

5. In §4.2.15, a total ban on firearms on the premises of a neighborhood home could be challenged under the Second Amendment and the Delaware Constitution. The DLTCRP may wish to seek guidance from the Office of the Attorney General in this context.

6. The Division should consider adding a subsection to §5.4 which currently contemplates submission of plans only to DHSS. Under certain circumstances, the premises would be subject to review by the State Architectural Accessibility Board.

7. The only accessibility references in Section 5.4 are in the context of ramps. See, e.g., §§5.4.6 and 5.4.6.2. This is highly under inclusive. For example, a ramp for ingress and egress is of little use if doorways are narrow or bathrooms are inaccessible. A general reference at §5.6 is rather cryptic. The CMS Rule contemplates that “the setting is physically accessible to the individual” overall. See 42 C.F.R. 441.710(a)(1)(B).

8. Section 5.4.6 only requires a ramp if accommodating individuals who regularly require wheelchairs. One problem with this approach is that providers have no incentive to have accessible sites and individuals using wheelchairs are disproportionately excluded from the neighborhood home network. A second problem with this approach is that visitors using wheelchairs cannot enter the home.

9. There is some “tension” between §5.9.5 (requiring doors to be capable of being opened from either side at all times) and §5.10.7 (requiring lockable doors). The CMS Community Rule promotes resident privacy, including doors “lockable by the individual, with only appropriate staff having keys to doors”. See 42 C.F.R. 441.710(a)(1)(B).

10. Section 5.10.12 limits bedrooms to no more than two (2) individuals. It would be prudent to include a subsection noting that residents have some choice in roommates. See Title 16 Del.C. §1121(28). The CMS Rule is even more affirmative: “Individuals sharing units have a choice of roommates in that setting.” 42 C.F.R. 441.710(a)(1)(B).

11. Section 6.2 contemplates manual entries in a medication administration record. If electronic entries are permissible in a data base (e.g. in THERAP), then this section may merit revision.

12. Section 6.8.3.1 merits review. It generally includes elopement as a reportable incident only if the whereabouts of the individual are unknown and the individual suffers harm. Many behavior plans include restrictions (e.g. line of sight or supervision standards). Section 6.8.3.1 does not account for violations of behavioral plans. Thus, an individual restricted to line of sight due to sex offenses could elope and the agency would not have to report the occurrence.

13. Section 6.8.4.2 characterizes injuries resulting in transfer to an acute care facility as a reportable incident. At a minimum, we recommend including “urgent care” facilities in this section. Anecdotally, we understand that a provider may have opted to take injured individuals to urgent care facilities to inferentially avoid reporting incidents. By analogy, the DSCY&F requires its providers to report any injury resulting in medical/dental treatment other than first aid provided on-site. See 9 DE Admin Code 103.15.22 and 103.32.0. This is manifestly a more protective standard.

14. Section 7.4 could be improved by incorporating the ADA standard that there should be no protrusion from the wall in excess of four inches.

15. Section 9.1.5 is overly restrictive in requiring all prescribed medications to be kept locked in a cabinet or lock box. An individual with asthma could not keep an emergency inhaler in his personal possession. An individual with dry skin could not keep a prescription skin moisturizer in his personal possession. The standard is also too brittle if staff are trying to train an individual to monitor and self-administer medications in anticipation of developing greater independence. Restricting access to an individually prescribed medication is not “normal” and the blanket policy of locking all prescribed medications may violate the CMS Community Rule. If there are less intrusive methods to achieve safety, they should be considered and restrictions only allowed if included in the person-centered service plan. See 42 C.F.R. 441.530 and 441.710(a).

16. We did not notice a “waiver of standards” provision analogous to the current regulation, §12.0. If this is an oversight, the Division may wish to include a comparable provision.

The Council may wish to consider sharing the above observations with the DLTCRP and DDDS. Since the application of the CMS Community Rule is implicated in multiple standards, the Council could also consider sharing a copy of any comments to the State Medicaid Director.

9. House Bill No. 90 (Early Voting)

This bill was introduced on March 22, 2017. As of April 10, it awaited action by the House Administration Committee. It is part of a legislative package designed to improving voter turnout. See excerpt from Delaware House Democrats “Leg Hall Insider” (March 27, 2017).

As background, thirty-seven (37) states and the District of Columbia authorize early voting prior to an election. See National Conference of State Legislatures article. The average early voting period is nineteen (19) days.

House Bill No. 90 would authorize early voting in Delaware elections “for at least 10 days” (line 4). Polling locations would be published at least 30 days in advance (line13). For statewide elections, at least one site would be required for each county and the City of Wilmington (lines 14-15). The bill would be effective January 1, 2020. The fiscal note reflects a modest cost

(\$128,000) beginning in FY21.

The advantages of early voting include a reduced need for absentee ballots and flexibility, especially since voting would be authorized on weekends. The enhanced flexibility would benefit persons with disabilities whose health status may fluctuate from day to day. The enhanced flexibility would also benefit caregivers of persons with disabilities who could schedule voting at an opportune time.

However, the bill would benefit from a clarifying amendment. The bill specifically incorporates the procedural protections in Chapter 49 to the early voting process (line 9). This would include provisions authorizing assistance to voters with disabilities and authorizing voter complaints (15 Del.C. §§4943 and 4990-4991). However, it does not specifically incorporate a statutory requirement that each polling place conform to the statutory accessibility standards of 15 Del.C. §4512. If the Commissioner designated an inaccessible polling location as the sole early voting site in a county, the effect on persons with disabilities could be quite serious. This prospect could easily be obviated by a simple amendment, i.e., inserting the following sentence after “election.” in line 14: “The Commissioner shall only designate locations which comply with §4512 of this Title.”

The Council may wish to consider endorsement contingent upon incorporation of the above amendment in the bill.

10. House Bill No. 63 (Absentee Voting)

This bill was introduced on March 9, 2017. As of April 10, it awaited action by the House Administration Committee. Since it amends the Delaware Constitution, the legislation would have to be adopted by a 2/3 vote in successive General Assemblies to take effect.

The committee discussed the following observations.

First, the Delaware Constitution is somewhat prescriptive in authorizing absentee ballots. For example, it contemplates use of absentee ballots based on “sickness or physical disability” but omits any reference to “mental disability”. This bill would remove limitations and allow the General Assembly to enact laws covering qualifications for the use of absentee ballots.

Second, the bill is identical to House Bill No. 20 from the 147th General Assembly and House Bill No. 105 from the 148th General Assembly. GACEC endorsed both of the prior bills. In 2013, a 27-14 vote on the bill in the House fell one vote short of the 2/3 benchmark. In 2015-16, the legislation was released from the House Administration Committee but received no formal House vote.

The Council could consider endorsement. The majority of states authorize the use of absentee ballots for any reason and the Delaware Constitution does not authorize absentee ballots based on mental disability or caretaker status. A courtesy copy of any commentary could be shared with the Election Commissioner.

11. House Bill No. 100 (Substance Abuse Treatment)

This legislation was introduced on March 23, 2017. It passed the House on April 4, 2017. As of April 10, it awaited action by the Senate Health, Children, & Social Services Committee. The fiscal note indicates that the Department of Justice would use existing funds derived from its Consumer Protection Fund to cover the costs of implementation. The legislation would “sunset” on January 1, 2020 unless reauthorized prior to that date.

The bill seeks to address insurer denial of substance abuse treatment, in whole or in part, including refusal to approve an appropriate type or duration of treatment (lines 5-7). The legislation posits that many insured individuals lack the means to challenge such denials (lines 13-14). The Delaware Department of Justice would be authorized to use Consumer Protection Funds to provide legal and expert assistance to such aggrieved individuals (lines 22-33). Assistance could include direct representation as well as retention of auditors and experts (lines 24 and 37-40). Insurers subject to the jurisdiction of the Delaware Insurance Commissioner would be required to include disclosure of the potential availability of DOJ assistance in written grievance forms (lines 51-53). DHSS would be required to ensure that Medicaid beneficiaries receive similar notice of the potential availability of DOJ assistance (lines 69-74).

The committee discussed the following observations.

First, the scope of the private insurers required to provide the notice would ostensibly be limited to those insurers subject to Delaware Department of Insurance jurisdiction. As the Synopsis recites, employer-funded health benefit plans are typically exempt from state regulation. We believe that most health insurers providing coverage in Delaware are covered by the federal ERISA (Employee Retirement Income Security Act) and therefore exempt from the jurisdiction of the Delaware Department of Insurance. However, the DOJ could still provide valuable assistance to aggrieved individuals under private plans not regulated by the Delaware Department of Insurance (line 25 and Synopsis).

Second, there is some potential for a conflict of interest since the DOJ represents the State Medicaid agency, the Division of Medicaid & Medical Assistance (DMMA). The Medicaid Managed Care Organizations (MCOs) are State contractors who are acting on behalf of the State. This potential conflict is mitigated in the Fair Hearing context since the MCO, not DMMA, presents the case and defends its decision. See 16 DE Admin Code 5304.3. However, a potential also arises in the following contexts:

- A. A State DMMA employee serves as 1 of 3 decision-makers for internal MCO appeals.
- B. DOJ advocacy to secure enhanced substance abuse services for a Medicaid beneficiary may result in fiscal obligations of the State Division of Behavioral Health Services or State Division of Substance Abuse & Mental Health which are represented by the DOJ.

Third, the Synopsis suggests that the Sunset provision is intended to permit assessment of the

efficacy of the bill. Apart from authorizing DOJ assistance to individuals denied substance abuse treatment, policymakers could also consider supplemental options. For example, legislation or regulations could be prepared to:

- A. uniformly impose the burden of proof and persuasion on the insurer/MCO in disputes concerning substance abuse treatment;
- B. make the opinion of the treating prescriber controlling unless clearly erroneous as documented by production of clear and convincing evidence;
- C. require any benefit of doubt regarding prescribed substance abuse treatment to be resolved in favor of eligibility; and/or
- D. encourage a robust independent medical assessment if substance abuse treatment is denied (consistent with attached §3.4.7 of DHSS-MCO contract).

The Council may wish to consider endorsement while noting that policymakers could also consider supplemental approaches to addressing denials of substance abuse treatment. A courtesy copy of any comments should be shared with the Attorney General.

12. House Bill No. 70 (Cursive Writing)

This bill was introduced on March 9, 2017. As of April 10, it had been released from the House Education Committee and awaited action by the full House. It is similar to H.B. No. 52 from the 148th General Assembly. That legislation was released from committee but did not receive a House vote. The GACEC endorsed the predecessor bill.

In a nutshell, Common Core standards do not require students to learn cursive writing. This has prompted a growing number of states to react by adopting legislation requiring or encouraging cursive instruction. At least fourteen (14) states have adopted cursive proficiency in public schools laws. Legislation is pending in other states.

Opponents argue cursive proficiency is unnecessary given the prevalent use of electronic keyboards on computers, phones and pad devices.

Proponents argue that learning cursive enhances brain function, increases fine motor dexterity, allows students to read handwritten and historic documents and is artistic.

The debate is reminiscent of that over Braille instruction for individuals who are blind or have visual impairments. With screen reader software, text can be read to such individuals. With software such as Dragon Dictate, verbal dictation of the individual is printed on a screen. Thus, detractors of Braille instruction argue it is unnecessary. To the contrary, studies confirm that instruction in Braille increases brain function and is correlated with higher educational and vocational achievement. Although the Delaware Department of Education has proposed regulations omitting Braille instruction, it has been prompted to reinstate standards when reminded that Delaware statutory law requires instruction in Braille. See Title 14 Del.C. §206.

Another analog is instruction of multiplication tables. Given the ready availability of calculators, one could argue there is no need to teach multiplication tables. New Hampshire addressed this concern by adopting legislation in 2015 designed to prompt schools to both teach cursive and memorization of multiplication tables.

The Council may wish to consider endorsement subject to consideration of one clarifying amendment. On the one hand, the bill requires all public elementary schools (which would include charter schools) to teach cursive writing (lines 4-5). On the other hand, the bill only requires local boards of education (not charter school boards) to ensure compliance. For consistency, the bill could be amended by inserting “and charter school board of directors” after “board of education) in line 6. See, e.g., 14 Del.C. §504.

13. House Substitute No. 1 for House Bill No. 85 (Charter Schools)

This legislation was introduced on March 28, 2017. As of April 10 it had been released by the House Education Committee and awaited action by the full House. House Amendment No. 1 has been placed with the bill.

Existing law allows charter schools to adopt a preference for “students residing within a 5-mile radius of the school”. See Title 14 Del.C. §506(b)(3)a. Only two (2) charter schools have adopted the preference, i.e., the Newark Charter School and the First State Montessori School. The main focus of the legislation is the Newark Charter School. Consistent with articles reviewed, proponents of the preference posit that the preference is justified “so schools could create a neighborhood atmosphere”. Critics counter that the preference “has allowed charters to screen out at-risk kids - including those in poverty - and exacerbated racial and economic segregation”.

The current legislation represents a compromise which substitutes an undefined “contiguous area” for the “5 mile radius”. However, House Amendment No. 1 would strike the proposed “contiguous area” preference.

Similar legislation (H.B. No. 83) was introduced in 2015. However, that bill proposed to both eliminate the 5-mile preference and ban discrimination “against any student in the admissions process because of the student’s residence’s proximity to the school”.

The charter school law already allows a preference for “students residing within the regular school district in which the school is located”. See line 10 of the bill. Therefore, if the 5-mile radius preference were stricken, Newark Charter could still have a preference for students of the Christina School District.

Statistics corroborate concerns that the enrollment of Newark Charter does not contain the expected percentage of special education, low income, or minority students.

| | Newark Charter | Christina School District | State |
|----------------------------|----------------|---------------------------|-------|
| Special Education Students | 5.6% | 18.6% | 14.4% |
| White Students | 64.9% | 28.7% | 45% |
| Low Income Students | 7.9% | 43.8% | 36% |

The Christina School District has more than three times the percentage of special education students and more than five times the percentage of low-income students as the Newark Charter School within its borders. Charter schools are public schools which should not ostensibly be operating as exclusive private schools.

Parenthetically, the exclusionary effect of the “five mile radius” preference is exacerbated by another preference in existing law: “students who have a specific interest in the school’s teaching methods, philosophy, or educational focus”. See Title 14 Del.C. §506(b)(3)c. Consistent with the articles reviewed and Attorney General’s opinion, the Wilmington Charter School was allowed to exclude students based on scores on a “placement” test and lack of enrollment in honors classes prior to application.

| | Wilmington Charter | Red Clay Consolidated School District | State |
|---------------------|--------------------|---------------------------------------|-------|
| Special Education | 0.5% | 12.1% | 14.4% |
| White Students | 57.5% | 43.6% | 45% |
| Low Income Students | 3.7% | 35% | 36% |

A public school enrolling only a half of 1% of special education students is difficult to defend when the statutory norm is that students are admitted “by lottery in the case of over-enrollment”. See Title 14 Del.C. §506(a)(3)b. Moreover, the percentage of low income students in the host district (Red Clay) is almost 10 times the percentage of low income students in Wilmington Charter.

The Council may wish to consider sharing these observations and endorsing House Substitute No. 1 for House Bill No. 85 if amended by House Amendment No. 1. Courtesy copies could be shared with the DOE, Delaware State Education Association, the Attorney General and the American Civil Liberties Union (ACLU).

14. House Bill No. 83 (DelDOT Right of Way Maintenance)

This legislation was introduced on March 21, 2017. As of March 28, it awaited action by the House Transportation, Land Use & Infrastructure Committee.

Under current law, the responsibility over many public roads and rights of way is under the “absolute care, management and control of the Department and shall be maintained, repaired and reconstructed by the Department”. See lines 7-9 and 51-57. This “absolute” standard disallows counties from enforcing normal maintenance standards designed to facilitate travel.

Consider the following New Castle County examples.

1. Consistent with NCC Property Maintenance Violations overview, bushes, fences, and low tree limbs are not allowed to encroach on a sidewalk.
2. Consistent with the NCC Ordinance 302.8.5.3, oversized recreational vehicles and boats can only be parked in the side or rear yard of properties under two acres. Otherwise, they would often block a sidewalk if parked in the main driveway.
3. Consistent with NCC Ordinance 4.02.003, dog and cat owners must remove feces deposited by their animals on sidewalks within one hour of “deposit”.

Persons with disabilities with mobility impairments are disproportionately affected by violations of any of the above standards. Individuals reliant on wheelchairs, canes, or assistive technology cannot simply divert their travel onto a lawn or over a curb. They can typically invoke a consumer-friendly County complaint system to promptly resolve right of way issues violating County standards. Consistent with the NCC “Code Enforcement” overview, a Code Inspector responds to complaints and property owners are given 12 days to self-correct prior to issuance of a ticket.

Unfortunately, this standard complaint option is not available if the violation is occurring in a DelDOT right of way. For example, a committee member personally observed a portable basketball hoop system placed for months in a residential curb cut a few years ago in a suburban development. A complaint was submitted to the County but was referred to DelDOT for enforcement since the sidewalk was deemed within jurisdiction of DelDOT. Although DelDOT did resolve the issue, it would have been easier and quicker to use the County complaint system.

House Bill No. 83 would authorize, but not require, counties to adopt and enforce maintenance ordinances in DelDOT rights of way. From a public policy standpoint, there are at least three (3) advantages to approving this authorization.

First, it would facilitate travel by persons with disabilities who could invoke the normal, streamlined county code enforcement system.

Second, it may obviate duplication of government services. In many cases the problem in the right

of way may be the “tip of the iceberg”. For example, an abandoned property may present several Code violations (high weeds; unsafe conditions; standing water) which are already being addressed by the County. Requiring DelDOT to separately and independently address sidewalk issues is not cost-effective.

Third, county enforcement may save the State money. Consistent with the January 16, 2014 News Journal article, DelDOT spent \$260,000 to remove snow from sidewalks in one month. If a county ordinance required at least some property owners to remove snow, the responsibility of the State would be reduced.

The Council may wish to consider sharing these observations with policymakers.

MEMBERSHIP COMMITTEE

There was no membership report at this time.

PERSONNEL COMMITTEE

There was no report at this time.

OUTSIDE COMMITTEE UPDATES

Terri Hancharick shared that Secretary Walker of the Department of Health and Social Services held a town hall meeting recently. She shared her priorities which included mental health services, among others. Staff sent out the dates for future meetings but will re-send them for those who may not have saved them. Bill Doolittle shared information on upcoming legislation, including a re-draft of Senate Bill 92 (Autism bill) from last session which will hopefully be submitted soon. There is an ongoing effort to reduce litigation for special education. The goal is to submit legislation to update the mediation process to make sure the process is used more widely.

Dafne thanked all of our speakers and guests for joining Council for this evening. Responses to letters can be found in the back of the room.

Dafne asked for and received a **motion to adjourn**. The **motion was approved** and the meeting was adjourned at **8:40 p.m.**